

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4432 of 1995

with

SPECIAL CIVIL APPLICATION NO. 4433 OF 1995

with

SPECIAL CIVIL APPLICATION NO. 4434 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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PATEL PRAVINBHAI DAHYABHAI & ORS.

Versus

COLLECTOR, SABARKANTHA & ANR.

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Appearance:

Shri R.M. Shah, Advocate, for the Petitioner (in all matters)

Shri T.H. Sompura, Assistant Government Pleader, for the Respondents (in all matters)

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 12/09/96

ORAL JUDGEMENT

The common order passed by the Collector of Sabarkantha at Himatnagar (respondent No.1 herein) on 3rd November 1993 as affirmed in revision by the common order

passed by and on behalf of the State Government on 31st March 1995 and communicated on 25th April 1995 is under challenge in all these three petitions under articles 226 and 227 of the Constitution of India. Common questions of law and fact are found arising in all these three petitions. I have therefore thought it fit to dispose of all these three petitions by this common judgment of mine.

2. The dispute centres round one parcel of land bearing survey No. 22/3(paiki) situated at village Godh taluka Malpura district Sabarkantha (the disputed land for convenience). It appears to be a government waste land. The petitioner in each case appears to have encroached upon it. They moved the Deputy Collector at Modasa at Himatnagar (respondent No.2 herein) for regularisation of each one's encroachment. By his order passed on 25th January 1993, respondent No.2 regularised each petitioner's encroachment on certain terms and conditions. Its copy is at Annexure A to each petition. Pursuant thereto, each petitioner paid up the necessary charges. A copy of the receipt in that regard is at Annexure B to each petition. The order at Annexure A to each petition appears to have come to the notice of respondent No.1. He appears to have found it not according to law. Its suo motu revision under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief) was therefore contemplated. Thereupon each petitioner was called upon to show cause why the order at Annexure A to each petition should not be revised. After hearing the petitioner in each case, by his common order passed on 3rd November 1993, respondent No.1 set aside the order at Annexure A to each petition. Its copy is at Annexure C to each petition. Each petitioner carried the matter in revision before the State Government. By one common order passed on 31st March 1995 and communicated on 25th April 1995, all the three revisional applications came to be rejected. Its copy is at Annexure E to each petition. Each petitioner has thereupon approached this Court by means of his respective petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure C to each petition as affirmed in revision by the order at Annexure E to each petition.

3. In his impugned order at Annexure C to each petition, respondent No.1 found that respondent No.2 has no jurisdiction to pass the order at Annexure A to each petition. It is not shown by respondent No.1 in his impugned order at Annexure C to each petition on what basis it was held that respondent No.2 did not have any

competence to pass the order in question.

4. In this connection a reference deserves to be made to sec. 10 of the Code. Thereunder inter alia a Deputy Collector is empowered to exercise all the powers conferred upon a Collector thereby or thereunder. In that view of the matter, it was necessary for respondent No.1 to have shown in his impugned order at Annexure C to each petition as to how respondent No.2 was lacking in competence in passing the order at Annexure A to each petition.

5. The State Government in its impugned order at Annexure E to each petition has not touched this aspect of the case. It cannot be gainsaid that the order at Annexure C to each petition was carried in revision before the State Government. It was very much evident from the order itself that the order at Annexure A to each petition was set aside only on the ground that the author of the order was not competent to pass it. In that view of the matter, the author of the order at Annexure E to each petition was required to focus his attention on this aspect of the matter. Instead, the matter was proceeded on the footing that the application for allotment of the disputed land made for starting an educational institution was pending. The petitioner has brought on record one order passed by respondent No.1 on 7th December 1992 rejecting the application for allotment of the disputed land for establishment of an educational institution thereon. Its copy is at Annexure F to each petition. That order was obviously passed prior to the order at Annexure A to each petition. In that view of the matter, the application for allotment of the disputed land for starting an educational institution was not pending. It appears that the author of the order at Annexure E to each petition has not applied his mind to this aspect of the matter. It appears that he has not perused the record at all and has passed the impugned order at Annexure E to each petition merely on some erroneous impression. That order cannot be sustained in law.

5. Ordinarily, on finding that the impugned order at Annexure E to each petition is an outcome of non-application of mind on the part of its author, the matter should be remanded to the State Government for its fresh decision according to law. However, since the impugned order of respondent No.1 at Annexure C to each petition is also found to be made ipse dixit without pointing out therein as to how respondent No.2 did not possess any competence to regularise the encroachment, it

is not desirable to remand the matter to the State Government. It would rather be desirable to remand the matter to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law.

6. It appears that at the stage of preliminary hearing of all these three petitions, the petitioner in each case had shown willingness to pay more amount. Learned Advocate Shri Shah for the petitioner in each case submits that each petitioner is prepared to pay the market value of the land in question if it is allotted to each one of them in terms of the order at Annexure A to each petition as each petitioner claims to have spent huge amount for bringing the disputed land in good shape. It will be open to each petitioner to make an application to respondent No.1 for allotment of the disputed land to each one of them in terms of the order at Annexure A to each petition on the price thereof fixed by respondent No.1. It is obvious that, as and when such an application is made by and on behalf of each petitioner, respondent No.1 will decide its fate on its own merits according to law keeping in mind the amount, if any, spent by each petitioner for levelling the land which was stated to be a waste land at the relevant time and keeping in mind the long possession of each petitioner.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure C to each petition as affirmed in revision by the order at Annexure E to each petition deserves to be quashed and set aside. The matter deserves to be remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

8. In the result, each petition is accepted. The order passed by the Collector of Sabarkantha at Himatnagar on 3rd November 1993 at Annexure C to each petition as affirmed in revision by and on behalf of the State Government by the order passed on 31st March 1995 and communicated on 25th April 1995 at Annexure E to each petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Respondent No.1 may take into consideration the application made by each petitioner for allotment of the land and fix the market value thereof according to law if it could be allotted. Rule issued on each petition is accordingly made absolute to the aforesaid extent with no order as to

costs.

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